employ of other manufacturers who had already settled similar disputes with the union, if they continued to supply the delinquent employer with goods of their manufacture. The court granted an injunction restraining such action on the part of the union because it was intrinsically unlawful to interfere with employers who had already settled their disputes, and because the attitude of the union was oppressive. Assuming that here the immediate object of the union was to injure the plaintiff rather than to advance a common cause, it is of course distinguishable from that of the *National Protective Association* v. *Cumming*. Considering the immediate object a legitimate one, the cases, although apparently opposed in spirit, may be aligned by interpreting the latter to justify prohibitive action by a comprehensive union with respect to non-union workmen, towards any one employing their members, in the sense that in each individual instance, the conflict between union and employer would be direct and isolated, whereas in the former it was general, affecting innocent as well as delinquent employers. Although it might be argued that the union, representing its members by agreement,[19] had a right to strike for the advancement of the interest of its members and could properly threaten to do what it had a right to do,[20] thus justifying the pressure put upon the employers not involved in the dispute, the court seems to have made a wise step in so restricting the right of self advancement as to safeguard the freedom of pursuing a trade without intimidation from virtual strangers,[21] and to recognize the plaintiff's interest therein. Surely, the fact that the employees were all affiliated to one organization could give no interest in the management of the employer's affairs to those not immediately employed in his business.[22]

THE PROTECTION OF REMEDIES UNDER THE CONTRACT CLAUSE OF THE CONSTITUTION.—To the inability of the courts to agree upon the conception of the obligation protected by the contract clause of the constitution has no doubt been attributable in large measure the diversity of holdings with respect to the extent to which that protection applies to remedies. Thus, from the view that the obligation is but the means of enforcing the contract[1] it readily follows that the remedy existing at the time of its inception is a part of the agreement—a contention that has frequently been made.[2] It is true there are abundant *dicta* to justify such a view, but the decisions have proceeded rather on the theory that the obligation, in the constitutional sense, consists in the necessity which exists by reason of the attitude of the State, of performing the stipulations of the contract or making reparation for failure so to do.[3] Undoubtedly, since this necessity is to be

[19]See Russell *v.* N. Y. Produce Exchange (N. Y. 1899) 27 Misc. 381.

[20]Nat. Prot. Ass'n. *v.* Cumming *supra;* Park & Sons Co. *v.* Nat. Druggist's Ass'n. *supra.* And see Plant *v.* Woods (1900) 176 Mass. 482 (dissent).

[21]*Cf.* Loewe *v.* Cal. St. Fed. of Labor (1905) 139 Fed. 71; Webb *v.* Drake (1899) 52 La. Ann. 290.

[22]*Cf.* Beattie *v.* Callanan *supra;* Oxley Stave Co. *v.* Cooper's Int. Union (1896) 72 Fed. 695; Purvis *v.* United Brotherhood (1905) 214 Pa. St. 348.

[1]Louisiana *v.* New Orleans (1880) 102 U. S. 203.

[2]Von Hoffman *v.* City of Quincy (1866) 4 Wall. 535.

[3]Sturges *v.* Crowinshield (1819) 4 Wheat. 122; Bruce *v.* Schuyler (1847) 9 Ill. 221.

looked for in the presence of a remedy provided for the enforcement of the obligation, it follows that the clause is, in reality, a restriction upon the right of a State to govern the remedies which shall obtain within its jurisdiction. To contend, however, that this restriction is absolute is to overlook the fact that the supplying of a means to enforce the obligation is but one of the threefold offices of the law of the remedy, for in providing such means that law also affords a measure of the obligation[4] and evidences the attitude of the State to the contract. It is against the alteration of the law only in the last two respects that the prohibition is directed. No doubt there are laws, such as those relating to the construction of contracts, which by reason of the presumption that the parties looked to them to supply certain implied terms, become evidence of those terms, and thus in effect part of the contract.[5] That situation, however, does not exist in the case of remedial laws. The remedy can scarcely be said to constitute an implied term of a contract; it is not coeval with the obligation, since the right to it does not arise until a breach of the contract has occurred.[6] The contract does, indeed, give the right to reparation in the event of a breach, but for the method by which that right shall be vindicated the parties look to the state; nor can there, in the nature of things, be any certainty as to the time within which such reparation shall be made. This distinction is evidenced by the fact that although the right to reparation is strictly guarded,[7] the substitution of a remedy which, though equally efficacious is less convenient or less speedy than the former, is permissible.[8] The difficulty of ascertaining whether a change of remedy impairs an obligation is frequently present in determining the constitutionality of laws affecting the liability of stockholders to creditors of an insolvent corporation. Where the liability extends to the creditors collectively a change from a bill in equity to a suit in their behalf by the receiver is unobjectionable, since it merely alters the form of remedy.[9] The same result has been reached in a New York case in which the right of the creditor to sue severally subject to the defendant's right, in the event the indebtedness exceeded the stockholders' liability, to an injunction to compel the joining of other creditors, was destroyed by a statute confining the creditors to a joint suit.[10]

The question is put clearly in a case where the creditors' several rights were hampered by no such condition. On this point the position taken by the Maryland courts, opposed to that of the Federal courts[11] which deny the validity of a statute destroying such right, has recently been reiterated in the case of *Pittsburg Steel Co.* v. *Baltimore Equitable Society* (Md. 1910) 77 Atl. 255. Since the several character of the former remedy was not casual but a necessary consequence of the several nature of the contract right,[12] it is obvious the law effected

---

[4]McCracken *v.* Hayward (1844) 2 How. 608.

[5]Barnitz *v.* Beverly (1896) 163 U. S. 118.

[6]Story, Constitution § 1385.

[7]McCracken *v.* Hayward *supra.*

[8]Tennessee *v.* Sneed (1877) 96 U. S. 69.

[9]Persons *v.* Gardner (N. Y. 1899) 42 App. Div. 490.

[10]Story *v.* Furman (1862) 25 N. Y. 214.

[11]Knickerbocker Trust Co. *v.* Myers (1904) 133 Fed. 264.

[12]Hawthorne *v.* Calef (1864) 2 Wall 10.

not merely an alteration of the remedy but in reality an extinguishment of the several right of creditors under the contract.[13] The same result was produced by the New York Statute involved in *Story* v. *Furman*, for although the theory on which the injunction rested, that the liability constituted a fund for the creditors in general, may have altered the contract right under the conditions named, it seems clear that in denying a several remedy where those conditions did not exist, the statute destroyed a substantive right.

In proceeding on the theory that the change did not lessen the value of the contract or provide a less efficacious remedy the Maryland court failed to give due weight to the real character of the change that was wrought. Where the alteration does not directly affect the contract obligations, the rule prevails that the providing of a remedy as efficacious as the former one or which does not lessen the value of the contract is the test of the law's validity.[14] And, because of the difficulty of determining the relative values of remedies, the courts are frequently compelled to resort to the test of reasonableness.[15] These rules, however, flowing from the necessity of preserving to the States the right to control remedies, must be confined to those cases in which an alteration of the remedy alone is effected. Manifestly, they can have no application where it is clear that the new law operates to abridge an absolute right or change the terms of the contract, since to admit them there would be to permit the State to impose upon the parties a new contract.[16]

DAMAGES RECOVERABLE BY AN ABUTTING OWNER FOR THE OPERATION OF A RAILWAY IN THE STREET.—The question of the extent of the injury sustained because of the use of a highway for railway purposes is controlled primarily by a proper determination of the relative rights of the abutting owner and the general public in the property taken.[1] Since, from the point of view of both the abutting owner and the public these rights are limited by the principle that a highway is devoted solely to highway purposes, any use which is to be considered proper must fall within the definition of this term. Consequently, in order to determine whether legal damage is caused by the appropriation of a street by a railway, it becomes necessary to decide whether or not such a use constitutes the imposition of an additional burden on the highway, and it is generally held that a steam[2] or elevated railroad[3]

---

[13]Woodworth *v.* Bowles (1900) 61 Kan. 569.

[14]Louisiana *v.* New Orleans *supra.*

[15]Tennessee *v.* Sneed *supra.*

[16]Planters' Bank *v.* Sharp (1848) 6 How. 301.

[1]Atlanta and West Point R. R. *v.* Atlantic, Birmingham etc. R. R. Co. (1906) 125 Ga. 529; 8 COLUMBIA LAW REVIEW 575.

[2]Imlay *v.* Union Branch R. R. Co. (1857) 26 Conn. 249; Spalding *v.* M. & W. I. Ry. Co. (1907) 225 Ill. 585; Williams *v.* N. Y. C. R. R. Co. (1857) 16 N. Y. 97; but see Fulton *v.* Short Line Ry. Transfer Co. (1887) 85 Ky. 640.

[3]Story *v.* N. Y. El. R. R. Co. (1882) 90 N. Y. 122; Lahr *v.* Met. El. Ry. Co. (1887) 140 N. Y. 268.